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DEREK CROXTON

The Peace of Westphalia of 1648 and the Origins of Sovereignty

SOVEREIGNTY IS DESCRIBED in recent works as 'perforated, defiled, cornered, eroded, extinct, anachronistic, even interrogated'.[1] Intercontinental ballistic missiles, electronic communications technology, and human rights have led many to doubt whether the sovereign state can or should continue to exist, and some speak openly of moving to a new stage in international relations 'beyond Westphalia'.[2] But sovereignty has been central to our understanding of the states system and is the fundamental principle enunciated in the charter of the United Nations.[3] What would happen to the states system if sovereignty were removed as an organizing principle?

To answer that question, scholars turn to the perceived origins of sovereignty, asking how the political system was arranged before the existence of sovereign states, and how and why it changed to include them. The search usually leads to the peace of Westphalia, the name commonly used for the treaties of Münster and Osnabrück signed in 1648 to end the Thirty Years War after five years of negotiation. Yet anyone who studies the treaties in detail comes away disappointed, without finding a clear statement of the principle of sovereignty. This article addresses the question of whether sovereignty, implicit or explicit, was a principle of the peace of Westphalia.

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1 M. R. Fowler and J. M. Bunck, *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty* (University Park, 1995), p. 2.

2 *Beyond Westphalia?*, ed. G. M. Lyons and M. Mastanduno (Baltimore, 1995); *The New World Order: Sovereignty, Human Rights, and the Self-Determination of Peoples*, ed. M. Sellers (Washington, 1996), p. 1. On the role of nuclear weapons, see J. Herz, 'Rise and Demise of the Territorial State', *World Politics*, ix (1957), 473-93; on other technological reasons, S. D. Krasner and J. E. Thomson, 'Global Transactions and Consolidation of Sovereignty', in *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s*, ed. E.-O. Czempiel and J. N. Rosenau (Lexington, 1989), pp. 195-219.

3 Found in article 2, section 1: 'the Organization is based on the principle of the sovereign equality of all its Members.'

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What is at stake is how we ended up with a sovereign states system at all. Did everyone agree to it or did it happen by accident? And if the latter, when did the notion of sovereignty become widespread enough to justify saying that it was characteristic of the system? This way of posing the questions makes it clear that sovereignty is taken here to mean the recognition by other states of the right to exclusive authority within a given territory, as opposed to the exercise of authority. Defining sovereignty, in F. H. Hinsley's words, as 'the *idea* that there is a final and absolute political authority in the political community ... and no final and absolute authority exists elsewhere', is the only possible approach to explaining the role of a treaty in establishing the principle of sovereignty.[1] No piece of paper can ever establish exclusive authority in a given territory; only administrative practice can do that. The most the paper can do is convince people that states *ought* to have exclusive territorial authority. By this definition, 'sovereignty is not a fact. Authority and power are facts ... [Sovereignty] is an assumption about authority.'[2] Hence, as John Ruggie states, sovereignty 'signifies a form of *legitimation*'.[3] In a system of sovereign states, each recognizes the others as the final authorities within their given territories, and only they can be considered actors within the system. It is precisely on this ground that scholars have identified Westphalia with the origins of sovereignty: as a formal statement of the principle of sovereignty, even if the practice was established earlier or later than 1648.[4]

Recent scholarship has seen state sovereignty as an historically novel method of organization that accompanied and was closely associated with other intellectual and cultural changes of the day.[5] This article argues, to the contrary, that de facto sovereign states existed at a time when few statesmen had anything like the modern conception of sovereign equality as the founding notion of the international system. Thus, although it is possible to view the workings of a sovereign states system in the negotiations at the congress of Westphalia, Europe had to wait much longer before this form of organization became conscious and formalized in international law. The existence of sovereign states was, in Kenneth N. Waltz's terms, a systemic effect, not in itself predictable based on the actions of any

1 F. H. Hinsley, *Sovereignty* (New York, 1966), p. 26, emphasis added.
2 F. H. Hinsley, 'The Concept of Sovereignty and the Relations between States', in *In Defense of Sovereignty*, ed. W. J. Stankiewicz (New York, 1969), p. 275.
3 J. G. Ruggie, 'Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis', *World Politics*, xxxv (1983), 275-6.
4 A. B. Murphy, 'The Sovereign State System as Political-Territorial Idea: Historical and Contemporary Considerations', in *State Sovereignty as Social Construct*, ed. T. Biersteker and C. Weber (Cambridge, 1996), p. 92; H. Spruyt, *The Sovereign State and Its Competitors* (Princeton, 1994), p. 27.
5 Spruyt, *Sovereign State*, pp. 67, 79-82; J. G. Ruggie, 'Territoriality and Beyond: Problematizing Modernity in International Relations', *International Organization*, xlvii (1993), 157-62.

individual ruler, but a consequence of these actions when applied across the whole international system.[1] Therefore, rather than being an idea that was historically constructed and then applied, sovereignty emerges as an historical fact that was gradually recognized by statesmen and eventually acknowledged as reality.

A key problem with studying the origins of sovereignty is that any ruler is likely to claim the sole authority to make decisions in his territory, while unwilling to concede the same authority to his neighbours within theirs. The difficulty is not finding a ruler who considers himself to be sovereign, but a group of rulers who recognize each other's sovereignty.[2] This is illustrated by the concept of sovereignty understood in the Middle Ages. The idea of final authority was natural to the Church, as God was the authority: his status was expressed on earth through the rival claims of the pope and the Holy Roman Emperor to represent him. The question at issue between their publicists was not whether there was an earthly sovereign, but who served the function. In time, as both the pope and the Emperor lost power, the authority of other monarchs such as the kings of England and France increased to the point that, after the defeat of Henry VI's bid for mastery, a multi-state system existed.[3] Its existence did not challenge, however, the theory that authority flowed from God through a single earthly representative; in fact, the pope put forward his most exalted claims in the fourteenth century as his power waned. Thus, although sovereign states existed, they did not recognize one another.

Before multiple sovereign authorities could be recognized, the authority of pope and Emperor had to be undermined conceptually; either by denying altogether the religious basis of secular authority, or that the Church's authority flowed through a single individual as opposed, for example, to a council of believers. The peace of Westphalia is credited with accomplishing both of these goals. First, Innocent X issued a brief, *Zelo domus dei*, condemning the peace on account of its formal recognition of Protestant-

1 K. N. Waltz, *Theory of International Politics* (New York, 1979), pp. 39-41, 65-7.

2 Hinsley, 'Concept of Sovereignty', pp. 275-7; E. Straub, *Pax et Imperium: Spaniens Kampf um seine Friedensordnung in Europa zwischen 1617 und 1635* (Vienna, 1980), pp. 20-4.

3 U. Scheuner, 'Die grossen Friedensschlüsse als Grundlage der europäischen Staatenordnung zwischen 1648 und 1815', in *Spiegel der Geschichte: Festgabe für Max Braubach zum 10. April 1964*, ed. K. Repgen and S. Skalweit (Münster, 1964), pp. 232-40; W. Kienast, 'Die Anfänge des europäischen Staatensystems im späteren Mittelalter', *Historische Zeitschrift*, cliii (1936), 229-71; W. Ullmann, 'The Medieval Papal Court as an International Tribunal', *Virginia Journal of International Law*, xi (1970-1), 366-7 and 'Zur Entwicklung des Souveränitätsbegriffes im Spätmittelalter', in *Festschrift Nikolaus Grass zum 60. Geburtstag dargebracht von Fachgenossen, Freunden, und Schülern*, ed. L. Carlen and F. Steinegger (Munich, 1974), pp. 9-27; R. Holtzmann, 'Der Weltherrschaftsgedanke des Mittelalterlichen Kaisertums und die Souveränität der Europäischen Staaten', *Historische Zeitschrift*, clix (1938), 251-64; W. Holtzmann, 'Imperium und Nationen', in *Relazioni del X Congresso Internazionale di Scienze Storiche*: III: *Storia del Medioevo* (Florence, 1955), pp. 288-303.

ism in the Empire. Second, the treaty contained a clause stipulating its own validity despite objections from the Church. The peace might appear, therefore, to have terminated the pope's claim to universal authority and confirmed the diplomatic independence of secular rulers. This was not the first time Protestantism in the Empire had been recognized, however: that had happened a hundred years earlier by the treaty of Nuremberg of 1532. Thereafter, the papacy, while ignoring the treaty, had adopted a cautious strategy towards Protestantism in Germany. On one hand, popes did not wish formally to recognize schismatics; on the other, they hesitated to try to persuade the Emperor to take a hard line, because they recognized him to be the Church's most important bulwark in the Empire. The solution was silence: to support the Emperor without acknowledging the existence of Protestantism.

The reason the papacy adopted the opposite policy in 1648 of officially condemning the peace had more to do with the individuals involved. Westphalia was no more formal or binding than, for example, the peace of Augsburg of 1555.[1] It was as conditional as its predecessors, in force only until a universal council could be summoned to reunite the various branches of Christianity – clear evidence of the continuance of the medieval conception of Europe.[2] If Westphalia did mark the end of papal authority in the Empire, it was the last in a series of retreats during the previous three hundred years in which popes had been forced to yield authority to kings.[3] Innocent X's predecessor, Urban VIII, one of the organizers of the congress of Westphalia, recognized the limits to his authority and did not try to act as arbitrator; instead, 'in order to spare the sensitivity of the warring powers and not to endanger the peace process, [he] fearfully avoided any appearance of influencing the parties.'[4] He instructed the papal nuncio to make no proposals himself.

The Emperor's authority was, if anything, even more decayed by 1648. The concept of 'rex imperator in regno suo' was already centuries old in both theory and practice. Although fears of a 'universal monarchy' were rife, the Austrian Habsburgs were seen only as auxiliaries to their more powerful Spanish relatives.[5] The Emperor, who did not have effective con-

1 See the in-depth coverage of this issue in K. Repgen, *Die Römische Kurie und der Westfälische Frieden: Idee und Wirklichkeit des Papsttums im 16. und 17. Jahrhundert*: I, pt. 1: *Papst, Kaiser, und Reich, 1521-1644* (Tübingen, 1962). See also M. Zimmermann, 'La crise de l'organisation internationale à la fin du moyen âge', *Académie de droit international: Recueil des cours*, xliv (1933, pt. 2), 315-438, on the rise and decline of papal claims to international authority, which he places in the period from 1200 to 1450 (and hence firmly over by the time of the peace of Westphalia).

2 *C[onsolidated] T[reaty] S[eries], 1648-9*, ed. C. Parry (Dobbs Ferry, 1969), pp. 136, 214.

3 See the analysis in Zimmermann, 'La crise de l'organisation internationale'.

4 See Dickmann, *Der Westfälische Frieden* (Münster, 1959), pp. 80-7, 336-9 (quotation from p. 82).

5 F. Bosbach, *Monarchia Universalis: Ein politischer Leitbegriff der frühen Neuzeit* (Göttingen, 1988),

trol over the Empire, let alone the monarchies of Spain, Sweden, and France, had distanced himself long before from the papacy, arguably the source of his universal authority. The electoral procedure codified in the Golden Bull of 1356 made it clear that the pope played no role in the selection of the Emperor, a development formally endorsed by Maximilian I in 1506 by the addition of the word 'elected' to his title. Lastly, the title 'Holy Roman Empire' was expanded in 1486 to 'Holy Roman Empire of the German Nation', further particularizing it and separating it from the universality of the Church.[1]

Despite the increasingly specific and limited nature of Imperial authority, however, scholars have consistently interpreted the steps taken at the peace of Westphalia as, at the least, the decisive final step towards terminating the Emperor's universal pretensions.[2] In a widely used textbook, Bruce Russett and Harvey Starr write:

> The end of the Thirty Years War brought with it the final end of the medieval Holy Roman Empire. Authority for choosing the religion of the political unit was given to the prince of that unit and not to the Hapsburg Emperor or the Pope. No longer could one pretend there was religious or political unity in Europe. Authority was dispersed to the various kings and princes, and the basis for the sovereign state was established.[3]

There are several problems with this statement, of which the most important is the fact that the Holy Roman Empire lasted for another 158 years, until 1806. Although the estates were given new rights, including the right to make alliances with outside powers and a 'territorial right' of superiority within their own dominions, the rights demonstrate the limits to their sovereignty rather than its triumph. First, estates had been making treaties with outside powers long before the peace of Westphalia. Imperial sovereignty was more seriously infringed, in fact, by the peace of Passau of 1552, when the Emperor granted nobles the right to serve as mercenaries, even in the armies of his enemies, whereas Westphalia restricted the right to make alliances to alliances not directed against the Empire.[4] Second, the

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pp. 91-2.

1 H. Duchhardt, *Deutsche Verfassungsgeschichte 1495-1806* (Berlin, 1991), pp. 16-17, 24-5; W. Becker, *Der Kurfürstenrat: Grundzüge seiner Entwicklung in der Reichsverfassung und seine Stellung auf dem Westfälischen Friedenskongreß* (Münster, 1973), pp. 61-7.

2 R. Turrettini, *La Signification des traités de Westphalie dans le domaine du droit des gens* (Geneva, 1949), p. 68, is unusual in that he points to the German estates as the reason Westphalia founded sovereignty, but he admits that 'les Traités de Westphalie ne contiennent pas d'articles déterminés sur cette question de la souveraineté.'

3 B. Russett and H. Starr, *World Politics: The Menu for Choice* (San Francisco, 1981), p. 47.

4 F. Redlich, *The German Military Enterpriser and His Work Force: A Study in European Economic and Social History* (Wiesbaden, 1964), p. 106. For a view that state control over extraterritorial violence

'ius territoriale', rendered in German by 'Landeshoheit', was not understood as we understand sovereignty. Guido Braun shows that no French translation of the treaty, including the one prepared by the French envoys to the conference, rendered 'ius territoriale' by sovereignty, and that French and German legal scholars before and after 1648 distinguished between the territorial authority of a ruler and the absolute sovereignty of the Empire as a whole.[1]

The Holy Roman Empire did *not* cease to exist in practice or in theory in 1648. Had it been abolished, one could argue that the peace of Westphalia legitimized the de facto independence of the German princes, and thus took a demonstrable step towards the formal recognition of sovereignty. The estates continued after 1648, however, to think of themselves as a single body: they recognized the Emperor as their actual or nominal overlord, sent representatives to the Diet, paid common taxes, and even raised a joint army.[2] If they often functioned as independent units after 1648, they were never sovereign in practice; and less so according to the legal language used in the treaties of peace. Even as it became more and more difficult, if not impossible, to view the Holy Roman Empire as a monarchy under the sovereignty of the Emperor, no one supposed that sovereignty resided with the individual estates. Political theorists agreed that the estates exercised sovereignty as a group through the Reichstag. However inefficient and ineffective collective action in the Empire became, the Empire remained a collective sovereign entity.[3] In sum, the peace of Westphalia cannot be considered the foundation of sovereignty on the basis of having granted sovereignty to the individual German estates, because no one believed that it actually did so.

The second aspect of the peace that supposedly provides the foundation for sovereignty is the denial of a role for religious authority in secular matters by endorsing the principle of *cuius regio, eius religio*, which granted

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has become dominant only in the last two centuries, see J. E. Thomson, 'Sovereignty in Historical Perspective: The Evolution of State Control over Extraterritorial Violence', in *The Elusive State: International and Comparative Perspectives*, ed. J. A. Caporaso (London, 1989), pp. 227-54 and *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton, 1994).

1 G. Braun, 'Les traductions françaises des traités de Westphalie de 1648 à la fin de l'Ancien Régime', *XVIIe Siècle*, cxc (1995), 131-55. On the treaty terms, see the Peace of Münster, *CTS*, *1648-9*, pp. 148-9, 241.

2 Dickmann, *Der Westfälische Frieden*, pp. 167-8; Duchhardt, *Deutsche Verfassungsgeschichte*, p. 52; K. O. von Aretin, *Das Reich: Friedensgarantie und europäisches Gleichgewicht, 1648-1806* (Stuttgart, 1986), pp. 19-26.

3 For the problem of sovereignty as applied to the Empire prior to 1648, see Dickmann, *Der Westfälische Frieden*, pp. 124-42; J. H. M. Salmon, 'The Legacy of Jean Bodin: Absolutism, Populism, or Constitutionalism?', in *History of Political Thought*, xvii (1996), 506-14; Becker, *Der Kurfürstenrat*, pp. 91-132; J. Franklin, 'Sovereignty and the Mixed Constitution: Bodin and His Critics', in *The Cambridge History of Political Thought, 1450-1700*, ed. J. H. Burns (Cambridge, 1991), pp. 309-23.

territorial rulers in the Empire the right to choose the religion of their subjects and denied the Empire and the Emperor any right. Clearly, if religion is separated from politics in this way, the spiritual basis of both the pope's and the Emperor's secular authority is undermined: in Sir Ernest Baker's words, 'we may hear the cracking of the Middle Ages.'[1] The 'right of reformation', however, was neither introduced at Westphalia, nor reaffirmed there in its extreme form: German estates first gained the right in 1555 by the peace of Augsburg. Although the peace of Westphalia confirmed the right, an important qualification was added: that all subjects were guaranteed not only the right to emigrate, but also to freedom of conscience, to worship in neighbouring territories, and to send their children abroad to school or educate them at home.[2] Thus, the endorsement of individual rights at Westphalia limited state sovereignty.

The claim that the peace of Westphalia marked the end of Europe organized as a Christian community under the authority of pope or Emperor is, therefore, greatly exaggerated. Although the treaties implicitly endorsed the claim insofar as the pope rejected the treaties and the Emperor accepted an unfavourable settlement with his nominal inferiors, neither development was novel either legally or in practice; they merely marked another stage in the crumbling authority of both. Likewise, the recognition of Lutherans and Calvinists, the public acknowledgement of schism, was nothing new. And far from making religion an aspect of internal politics, the peace of Westphalia made religious liberty a matter of international responsibility.

The treaties may have contributed more to the recognition of sovereignty through their references to specific sovereign bodies and the legal authority they possessed. Ronald Asch, for example, points to the grant of independence to the Swiss Confederation and the United Provinces of the Low Countries.[3] The treaties, however, make no mention of the United Provinces' independence or sovereignty, which are referred to only in a clause which declares that the Burgundian Circle (of which they were a part) is to be excluded from the provisions of the treaty until Spain makes peace with France. The clause, which was devised as an expedient to allow France to make peace with the Empire but not Spain, had nothing to do with independence for the Dutch. The treaty explicitly states that the Burgundian Circle shall remain part of the Empire.[4]

1 Sir E. Baker, cited in Ruggie, 'Territoriality and Beyond'.

2 Treaty of Münster, *CTS, 1648-9*, pp. 148-9, 228-30; Dickmann, *Der Westfälische Frieden*, pp. 460-3.

3 R. Asch, *The Thirty Years War: The Holy Roman Empire and Europe, 1618-48* (New York, 1997), p. 144. Asch specifically says that 'sovereignty' is granted to the Dutch and Swiss, although the treaty uses no such word.

4 Treaty of Münster, *CTS, 1648-9*, pp. 277, 323; Dickmann, *Der Westfälische Frieden*, pp. 480-2, 486-7.

The treaty of Münster made between Spain and the United Provinces on 30 January 1648 may seem the proper place to look for recognition of the latter's independence. Spain formally renounced its authority over the Dutch; the treaty includes a clause by which Spain promises to try to ensure the neutrality of the United Provinces towards the Empire; and the Emperor recognized Dutch neutrality in 1653. Nevertheless, there are good reasons why the treaty of Münster should not be seen as the decisive moment in the separation of the United Provinces from the Empire.[1] First, as the Imperial Diet never ratified Dutch neutrality, it never attained the status of law. Second, the Emperor continued throughout the seventeenth century to invest the king of Spain with feudal rights in the United Provinces as well as the Spanish Low Countries. Not until 1728 was an investiture limited to the provinces still under de facto Habsburg authority.

This is not to argue that the United Provinces belonged to the Empire or to Spain after 1648; everyone, including the Habsburgs, knew that they did not. But the peace of Westphalia cannot be seen as marking their separation from the Empire. Charles V had removed the Low Countries (south and north) from most Imperial jurisdiction in 1548, well before the Dutch Revolt. During it, the Dutch gradually assumed that the Empire and the Austrian Habsburgs had forfeited their residual authority by their failure to aid the Dutch in their legitimate struggle against Spain. Nevertheless, no formal declaration to this effect was made, and remnants of Habsburg authority persisted – even among the Dutch themselves – long after the Union of Utrecht. In the manner typical of the *ancien régime*, the Dutch obtained their independence gradually and cumulatively, through prescription rather than an official declaration.

Although the Swiss, by contrast, were formally removed from Imperial jurisdiction, the endorsement of autonomy was less than a declaration of the principle. The clause concerning the Swiss is not a declaration of independence, but the authorization of a Swiss decree of 14 May. It makes no mention of sovereignty and states only that the cantons will be 'in possession of a sort of full liberty and exemption from the Empire, and so no way subject to the tribunals and sentences of the said Empire' ('in possessione vel quasi plenae libertatis et exemptionis ab Imperio esse, ac nullatenus eiusdem Imperii dicasteriis et iudiciis subiectos').[2] The wording did exempt the Swiss from all Imperial laws, but did not recognize their sovereignty; they remained nominally subject to the Empire as a 'relative'

1 For the following discussion, see the in-depth analysis by R. Feenstra, 'A quelle époque les Provinces-Unies sont-elles devenues indépendantes en droit à l'égard du Saint-Empire?', *Tijdschrift voor Rechtsgeschiedenis*, xx (1952), 30-63, 182-218.

2 Treaty of Münster, *CTS, 1648-9*, pp. 157, 239.

('Anverwandte').[1] Lest this seem an obscure detail, note that the Swiss continued to think of themselves as somehow connected with the Empire for a century or more after Westphalia. Doctoral dissertations in law at the University of Basel, which recognized de facto Swiss autonomy in administration, consistently legitimized the system of government on the basis of the 'translatio imperii' and the Imperial connection. A more conscious, clear conception of Swiss sovereignty in the modern sense only burst on the scene in the mid-eighteenth century unconnected with the peace of Westphalia.

Nowhere do the treaties mention the word 'sovereignty' itself, as there is no such word in Latin. Statesmen used many different Latin words to express rulership, but only one was commonly translated as 'sovereignty': 'supremum dominium'.[2] This term plays a prominent role in the sections of the treaty transferring territory – Pinerolo, Breisach, and parts of Alsace and Lorraine – to France.

The wording used to effect the transfers appears to support the idea of a new and more sharply defined notion of sovereignty. In the 'Three Bishoprics' of Metz, Toul, and Verdun, France was granted 'supreme dominion, rights of superiority, and all other rights'; in Pinerolo 'right of direct lordship and sovereignty'. France was also granted Breisach and parts of Alsace with 'all rights, proprieties, lordships, possessions, and jurisdictions'.[3] France demanded and received these territories absolutely, and not as fiefs, unlike Sweden, which accepted its part of Pomerania as a fief.[4] Despite the apparent lack of ambiguity, however, three qualifications need to be made.

First, the French felt obliged to specify that, in Alsace, 'vassals, subjects, people, towns, boroughs, castles, houses, fortresses, woods, copses, gold or silver mines, minerals, rivers, brooks, [and] pastures' should be transferred. Is this evidence of a transition to a new, more absolute transfer of rights, or of an older conception of royal authority in which even the minutest entitlements must be specified?[5] A look at treaties from earlier centuries shows that, although the list of territories included in the peace of Westphalia is unusually comprehensive, the legal terms used are less so. The treaty of Cambrai of 1529, for example, states that Francis I 'leaves and surrenders each and every right of jurisdiction, appeal, and sovereignty' that he has or could claim in Italy; but adds more detailed enumeration

1 Dickmann, *Der Westfälische Frieden*, pp. 438-9.

2 Braun, 'Les traductions françaises', pp. 111-13. See also N. Onuf, 'Sovereignty: Outline of a Conceptual History', *Alternatives*, xvi (1991), 435-7.

3 Treaty of Münster, *CTS, 1648-9*, pp. 294-5, 340-1.

4 Ibid., pp. 161-6, 244-9.

5 It is significant that a similar listing was given for the Pomeranian rights transferred to Sweden.

explicitly designed to anticipate quarrels.[1] Francis surrenders 'the fiefs, homage, peerage of France, oaths of fidelity and all subjection, jurisdiction, superiority, appeal, sovereignty, and all other rights', and will not claim sovereignty over the 'prelates, nobles, vassals, laws [!], castellanies, peasants, and inhabitants of the said County, present or to come'. As early as 1280, when Louis IX surrendered the county of Barcelona in excruciating exactness to Jaime I of Aragon, he

> left, ceded, and altogether yielded whatever of right and possession either as if he had them, if indeed he had them; or was even able to say that he had [them] so far in his domains or in the lands that he ruled as in the fiefs and in whatsoever other lands in the aforesaid [territories] ... with all honours, homages, districts, jurisdictions, and universal rights and appurtenances of those same, and with all incomes and products.[2]

In legal terms, then, the territorial transfers stipulated by the peace of Westphalia were not only *not* particularly clear, they were not stipulated as precisely as in earlier treaties.

A glance forward to two treaties drawn up later in the seventeenth century reveals a similar pattern, in which lists actually become less comprehensive. By the treaty of Aix-la-Chapelle of 1668, the towns acquired by France included 'their bailiwicks, castellanies, governances, provostships, territories, domains, lordships, appurtenances, dependencies, and annexes, by whatever name they may be called'. Louis XIV was granted 'the same rights of sovereignty, propriety, regal rights, patronage, guardianship, jurisdiction, nomination, prerogatives, and pre-eminences' over them as had belonged to the king of Spain and was not to be 'troubled nor disturbed ... under whatever pretext or opportunity that may arise in the said sovereignty'.[3]

The terms of the treaty of Ryswick of 1697 are similar. It states that Louis XIV shall return Alsace, including whatever 'was seized during the war, and places and rights occupied under the name of unions, or else proclaimed as reunions';[4] and although this list is declared to be sufficient, a more precise delimitation follows. The Elector Palatine, for example, is to receive 'the city and prefecture of Germersheim, including the presidency

1 *C[orps] U[niversel du] D[roit des] G[ens]*, iv. 9-10. The clause did *not* prevent further disputes: France simply claimed that the treaty was invalid in all its clauses.

2 '... quittavit, cessit, et omnino remisit quicquid juris et possessionis vel quasi habebat siquidem habebat vel habere poterat seu dicebat etiam se habere tam in domaniis sive dominicaturis quam feudis et in aliis quibuscunque in praedictis [territories] ... cum omnibus honoribus, homagiis, districtibus, jurisdictionibus, et juribus universis ac pertimentis eorundem, et cum omnibus fructibus et proventibus [etc.]': *CUDG*, ii. 135.

3 Treaty of Aix-la-Chapelle, articles iii and iv, *CTS, 1668-71*, pp. 16-17, 27-8.

4 Treaty of Ryswick, article iv, *CTS, 1697-1700*, pp. 10, 82.

and the subprefecture, with all citadels, cities, towns, villages, castles, estates, fiefs, and rights as they were restored by the peace of Westphalia, and even all written documents taken from the archive, the chancery, the feudal court, the chamber of accounts, the prefectures, and the other Palatine offices, no place, thing, right, or document to be excepted'.[1]

All of the treaties are trying to be as definitive as possible. The list changes over time – in the thirteenth century, feudal rights were the most prominent; in 1648, territorial rights; and in 1697, legal documents – but the principle remains the same. The emphasis on territory in the peace of Westphalia may be evidence for a changing conception of the state from rule over people to rule over territory, but is hardly a definitive indication of sovereign statehood. Not only did the treaty of Münster include people in the list of things transferred, but three different categories of person are listed based on their legal status – vassals, subjects, and people – the last being a catch-all for anyone who might be excluded from the first two. Compare this list with the list of territories returned by France to the Emperor, which specified 'monasteries, abbeys, prelacies, deaconries, [and] knights' fees, with all their bailiwicks, baronies, castles, fortresses, counties, barons, nobles, vassals, men, subjects, rivers, brooks, forests, woods, and all royalties, rights, jurisdictions, fiefs, and patronages, and all other things collectively and singly belonging to the lofty right of territory and of patrimony of the House of Austria'.[2] The two lists barely overlap. France includes copses, mines, and minerals, but leaves off abbeys, monasteries, baronies, and barons. Evidently, the two sides disagreed about the items they thought it necessary to specify.

The ambiguity is crucial to an understanding of contemporary views of sovereignty and the attempts made to implement transfers by treaty. The shift in subject matter was accompanied by a shift away from attempts at comprehensiveness towards airtight clauses that excluded the possibility of something being accidentally left out. In the treaty of Aix-la-Chapelle, additional clauses transfer everything 'by whatever name they may be called' and pre-empt 'whatever pretext or opportunity that may arise'. Article fifty-three of the treaty of Ryswick carries the development a stage further: it declares that 'all things agreed to by this peace shall be valid and shall be firmly valid in perpetuity, and shall be observed and executed as agreed; and all things that could ever be believed, alleged, or devised to the contrary shall be no obstacle, but shall be abrogated and made void, notwithstanding that such things should have been more specially or more fully mentioned, and that it may seem as if they ought to be called no

1 Treaty of Ryswick, *CTS, 1697-1700*, article viii, pp. 11, 83.
2 Treaty of Münster, *CTS, 1648-9*, pp. 298, 344.

abrogation or that they be a null or invalid annulation.'[1] The clause represents a more systematic attempt to anticipate contravention.

The attempt to draft an all-inclusive clause to close all loopholes shows that the continued existence of multiple layers and types of rights made a simple list insufficient; that no single concept of 'sovereignty' could stand in place of all of the others. Instead of declaring the transfer of all rights in a simple and unambiguous clause, the framers of Ryswick tried by a general clause to exclude any rights contrary to the treaty. They represented an international system characterized by a desire for absolute and unambiguous control, but in which complementary rights continued to co-exist.

The other two qualifications of French sovereignty are based on specific, legal limitations set out in the transfers. The transfer of Breisach to France is restricted by the phrase 'nevertheless reserving the privileges and immunities previously obtained by the said town from the House of Austria'.[2] Although sovereignty presupposes the right to make and enforce laws, and France above all other states claimed the right in the seventeenth century, France accepted the transfer of a city over which the king's authority would be restricted, and by prior agreements made with a foreign power. France was also required by the treaty to protect Catholicism in Alsace, 'and to abolish all innovations which had crept in during the war'.

The third qualification is so serious that it saps the strength of the terms of the treaty apparently transferring Alsace to France without qualification. To understand it, an explanation of the political situation in Alsace is required, as it was not a unified province, but in Georges Livet's word, a mosaic. It was conventionally divided into two parts, Upper and Lower Alsace. In Upper Alsace, the Habsburgs, who held the office of landgrave, exercised something approaching overall authority, although their power was limited and they were excluded from some areas, such as the territory of the bishopric of Basel. Lower Alsace, too, had a titular landgrave, the bishop of Strasbourg, but he had virtually no power. It was dominated by separate units including the city of Strasbourg, the bishopric of Strasbourg, Imperial knights, and a number of independent cities. Straddling the two parts of Alsace was a loosely unified group of ten cities known as the Decapolis, which recognized the Habsburgs as having a protectorate over them but little else. Authority in Alsace was, in short, extremely complicated and few people at the conference understood it. As the Habsburgs exercised limited and often ambiguous rights, there was some doubt about what they could legally transfer to France. In addition, the political units that saw themselves being negotiated out of the relatively safe, free, and

1 Treaty of Ryswick, article liii, *CTS, 1697-1700*, pp. 26, 97.
2 Treaty of Münster, *CTS, 1648-9*, pp. 295, 341.

highly decentralized government of the Empire and into the absolute monarchy of France, bargained hard to protect their rights.

Thus, Louis XIV, in a famous clause, was expressly required to leave certain enumerated political units in Alsace 'in that liberty and possession of immediacy in regard to the Holy Roman Empire, which they have hitherto enjoyed: so that he may not claim any royal superiority over them, but shall rest content with those rights that have belonged to the House of Austria, and which are ceded to the French crown by this treaty of peace'.[1] The reservation may appear to resemble the one governing Breisach, in which France is limited in its rights over a conquered territory. The complication arises from the number of political units specifically mentioned as protected. They include some, such as Strasbourg and Basel, that were clearly not transferred to France and over which France claimed no jurisdiction until Louis XIV's reunions – the peaceful but forceful annexation to France of a number of adjacent territories in the 1680s – but also others, such as the Decapolis, which were transferred. As the clause defines the rights of these units 'in that liberty and possession of immediacy in regard to the Holy Roman Empire', it makes nonsense of the idea that sovereignty is being transferred: how could France possess sovereignty over estates which remained immediate to the Holy Roman Empire? That the treaty intended to preserve rather than break off the Imperial tie is shown by the fact that the political units of Alsace continued for decades to send representatives to the Imperial Diet, pay Imperial taxes, and be subject to some Imperial laws.[2]

As a final complication, this section of the treaty of Westphalia ends with a famous clause which states: 'In such a manner, nevertheless, that by the present Declaration, nothing is intended that shall derogate from the Sovereign Dominion already hereabove agreed to'. Sovereignty is both granted and reserved: France's authority is not only limited by the treaty, but the estates themselves – both the territories France governed later and those it did not – also remain members in some fashion of the Empire. Given the ambiguity, the peace of Westphalia would have helped to define sovereignty rather better if it had transferred Alsace to France as a fief, a more comprehensible form of mixed jurisdiction.

* * *

If the grounds for attributing the origins of sovereignty to the peace of Westphalia, either owing to its repudiation of medieval organizational forms or to its explicit endorsement of the concept of sovereignty, are weak, did it implicitly recognize sovereignty, insofar as it was a multilateral

1 Treaty of Münster, *CTS, 1648-9*, pp. 300, 345.
2 G. Livet, *L'intendance d'Alsace sous Louis XIV, 1648-1715* (Paris, 1956), pp. 474-81.

treaty among equals? Both political scientists and historians sometimes claim that Westphalia 'sanctioned' or 'confirmed' an interstate system already in existence. Justin Rosenberg, for example, speaks of the peace of Westphalia as having begun 'an overt process of reflexive territorial ordering of the state-system' in the 'alternation of war and diplomacy', as if what had happened previously was not the alternation of war and diplomacy. Similarly, Stephen D. Krasner and Janice E. Thomson claim that the peace 'went some way toward domesticating and routinizing the international and civil conflicts generated by religious differences'.[1] Perhaps the most inclusive European treaty to that time tacitly justified sovereignty by its existence as an interstate document that regulated relations and territorial arrangements between states.

The peace of Westphalia was not in fact a multilateral treaty, but two bilateral treaties, one signed at Osnabrück between Sweden and the Emperor, the other at Münster between France and the Emperor. Bilateral treaties were not new; the Emperor himself had made many with other European monarchs nominally his subordinates. Nor did the peace of Westphalia recognize the equality of the signatories, despite the fact that sovereignty is usually held to imply equality. The haggling over precedence at Münster is legendary. In spite of the repeated attempts of the French and Swedish embassies to meet in 1644 to co-ordinate their negotiating strategy, they failed because they could not agree on protocol for the meeting.[2] The French offended the Dutch by refusing to concede them a title; and, although not solely responsible for the Dutch decision to make a separate peace with Spain at Münster nine months before the peace of Westphalia, the French action was impolitic, as it left them in a worse negotiating position.[3] Amidst all the disputes, however, the French never challenged the Emperor's primacy, the one symbolic relict of European unity in the Middle Ages. One can hardly reconcile Ferdinand III's device, 'Austriae est imperare orbi universo' ('Austria is to rule the whole world') with the mutual recognition of sovereignty among states.[4]

Even without these qualifications, however, the peace of Westphalia could not be seen as a treaty between sovereign states that implicitly endorses the concept of exclusive spheres of authority. It was founded on precisely the opposite notion: France and Sweden maintained to the end

1 J. Rosenberg, 'A Non-Realist Theory of Sovereignty? Giddens' "The Nation-State and Violence" ', *Millennium*, xix (1990), 253; Krasner and Thomson, 'Global Transactions and Consolidation of Sovereignty', p. 198.

2 See D. Croxton, *Peacemaking in Early Modern Europe: Cardinal Mazarin and the Congress of Westphalia, 1643-8* (Selinsgrove, 1999), ch. 6.

3 Dickmann, *Der Westfälische Frieden*, pp. 208-9.

4 J. Burkhardt, *Der Dreißigjährige Krieg* (Frankfurt, 1992), pp. 35-42.

that they fought not against the Empire, but only against the Emperor in his capacity as ruler of hereditary lands in Central Europe.[1] Rather than fighting *against* the Empire, France claimed to be fighting *for* it by defending the German estates from an assault on their constitutionally defined privileges and immunities.[2] France interpreted the war as an attempt to resist the Habsburgs' unlawful absolutism. Implicit in the explanation is the claim that one state may legitimately intervene in the affairs of another to defend the other's fundamental laws. This conception of international law grants subjects and intermediate bodies an international status. Far from restricting sovereignty to a few independent states, therefore, the peace of Westphalia entrenched its extension to political units clearly not sovereign in the sense of being independent, but subject to a higher authority.

The view was not unique to the Empire, however difficult an entity it may have been to explain in seventeenth-century legal terms, and which contained political sub-units more independent and de facto 'sovereign' than any other European state. France did not restrict to the Empire its claim to defend the rights of peoples. It intervened in Catalonia and Portugal on the same legal grounds: that of protecting the constitution of the Spanish monarchy against illegitimate attempts to impose absolutism.[3] In part, the claim was based on the existence of 'composite monarchies' in Europe, cobbled together out of different kingdoms and principalities.[4] France might easily claim a right to defend Portuguese immunities, as they were explicitly protected by the Spanish crown. But France itself was a composite monarchy containing several *provinces d'états* with special privileges in relation to the crown. One French diplomat at the congress of Westphalia told Alsatian politicians that as France already respected the liberties of free provinces such as Languedoc, it would respect Alsatian liberties in the same way. That Alsace, Brittany, and Provence were eventually incorporated into France and today form what we think of as an indissoluble national unit should not obscure the limited and contingent nature of French authority in the 1640s.[5] In short, the French policy of

1 See Scheuner, 'Die grossen Friedensschlüsse', pp. 245-6; also H. Duchhardt, 'Westfälischer Friede und Internationales System im Ancien Régime', *Historische Zeitschrift*, ccil (1989), 529-43.

2 See, e.g., the original instructions to the French plenipotentiaries, *A[cta] P[acis] W[estphalicae]*, i. pt. 1, 58-9; Swedish instructions, p. 248.

3 F. Dickmann, 'Rechtsgedanke und Machtpolitik bei Richelieu: Studien an neu entdeckten Quellen', in *Friedensrecht und Friedenssicherung: Studien zum Friedensproblem in der Geschichte* (Göttingen, 1971), pp. 42-6; D. E. Carmack, 'Law in French Diplomacy: From the Treaty of Westphalia to the French Revolution, 1648-1789' (Ph.D. dissertation, Virginia, 1963), pp. 18-19.

4 J. H. Elliott, 'A Europe of Composite Monarchies', *Past and Present*, cxxxvii (1992), 48-71.

5 On the limitations of royal authority in France, see W. Beik, *Absolutism and Society in Seventeenth-Century France: State Power and Provincial Aristocracy in Languedoc* (New York, 1985).

recognizing provinces of other monarchies – such as Portugal, Catalonia, and all of the estates in the Empire – as independent international actors cannot be explained as following inherent fault lines in political units. None of the provinces that France recognized was bound to succeed as a sovereign unit; some, such as Portugal, succeeded, while others, such as Catalonia, failed. In all cases, however, their existence allowed the French to justify intervention in the affairs of a foreign state in violation of the concept of sovereignty.

A second concept underpinning the peace of Westphalia, if less noticeably, which also implicitly questions state sovereignty is the clause providing that all signatories jointly guarantee the treaty against transgressors and agree to fight to restrain them if necessary.[1] The idea of an international league so dear to Cardinal Richelieu and taken up after 1642 by his successor, Cardinal Mazarin, never amounted to much in practice. Sweden objected and the clause was never invoked as a *casus belli*. Although the league, had it existed, would not rule out the idea of state sovereignty – it would only have enforced voluntary agreements among member states – the idea highlights seventeenth-century notions of the limits to state sovereignty, at least among states such as France which favoured it. Whether statesmen still thought of themselves as belonging to the 'Res publica Christiana', or had begun to think in more secular terms of 'Europe', they assumed that they shared a common culture with their neighbours and that the states system should be regulated by agreement among them.[2] The idea of an international league was not too far removed from the duke de Sully's 'Grand Design' published in 1638 or Emeric Crucé's ideas, published as *Le Nouveau Cynée* in 1623, for pacifying Europe. The assumptions underlying all three are similar to those of international organizations today.[3]

* * *

As the peace of Westphalia contributed little to the theory or practice of sovereignty, either explicitly or implicitly, a better way to grasp its significance is to consider the views of the statesmen who made it, asking what

1 Treaty of Münster, *CTS, 1648-9*, pp. 309, 354.

2 See A. Dupront, 'De la Chrétienté à l'Europe: La passion westphalienne du Nonce Fabio Chigi', in *Forschungen und Studien zur Geschichte des Westfälischen Friedens: Vorträge bei dem Colloquium französischer und deutscher Historiker vom 28. April-30. April 1963 in Münster* (Münster, 1965), pp. 49-84; R. H. Foerster, *Die Idee Europa, 1300-1946* (Munich, 1963); P. Blet, 'Die Idee der Christianitas im Frankreich des 17. Jahrhunderts: Vorstellungen und Wirklichkeit', *Gregorianum*, vii (1976), 285-305; Turrettini, *La Signification des traités de Westphalie*, pp. 87-98.

3 See Sir J. A. R. Marriott, *Commonwealth or Anarchy? A Survey of Projects of Peace from the Sixteenth to the Twentieth Century* (London, 1937); E. V. Suleyman, *The Vision of World Peace in Seventeenth- and Eighteenth-Century France* (New York, 1941), pp. 9-30; Maximilien de Béthune Sully, 'Mémoires des sages et royales Oeconomies d'Estat', *Nouvelle Collection des Mémoires relatifs à l'histoire de France*, ed. J. Fr. Michaud and J.-J.-F. Poujoulat: XVI, XVII (Paris, 1854).

they thought about sovereignty and how they hoped to embody their ideas in the peace. This approach has the advantage of recognizing Westphalia for what it was, a compromise peace, and thus helps to explain the ambiguities and contradictions in the text.

That French statesmen understood the meaning and utility of sovereignty in various ways is illustrated by their stance towards Alsace. At first, Mazarin proposed to annex the province as a fief, which would have allowed France to participate in Imperial affairs, including sitting at the Diet. In the end, however, the French preferred to take Alsace in sovereignty. The change can be attributed to a memorandum by the French envoy, Abel Servien, in which he set out the arguments in favour of both a fief and sovereignty, before concluding that sovereignty was preferable. To hold a territory in sovereignty was better suited to the dignity of the French monarchy: 'There is no advantage', wrote Servien, 'that equals that of not depending on anyone, and of being an absolute sovereign.'[1]

Imperial officials were as happy to let France acquire Alsace in sovereignty as France was to have it; in fact, they had suggested it. As they wished to prevent France from acquiring more rights of interference in Imperial affairs, they, too, preferred a more or less modern conception of sovereignty to the feudal conception of interlocking jurisdictions and loyalties.[2]

Servien also differed from his colleagues, Count d'Avaux and the duke de Longueville, in his interpretation of the clauses transferring Alsace and the Three Bishoprics to France. D'Avaux reported in October, shortly after the preliminary treaty had been signed, that 'in Lower Alsace we have only acquired the provostship of Haguenau with sixty villages; the towns belonging to the clergy and all the nobility being immediate to the Empire.'[3] He must not have supposed that it was legally impossible to acquire the immediate estates by treaty, as Wolfgang Hans Stein and Klaus Malettke have claimed,[4] because in an earlier letter about the Three Bishoprics, he reported that he and Servien would try to obtain sovereignty over them.[5] His statement does imply, however, that France may *not*

1 Servien to Lionne, 14 June 1646, *Die Französischen Korrespondenzen: 1646, APW*, [series] II [section] B, iv, no. 12. I thank Anuschka Tischer, Konrad Repgen, and the Vereinigung zur Erforschung der Neueren Geschichte for allowing me to use this volume prior to its publication. Much of this went directly into the plenipotentiaries' common memoir to court on 9 July (*Négociations secrètes touchant la paix de Munster et d'Osnabrug*, iii. 244-5).

2 K. Ruppert, *Die Kaiserliche Politik auf dem Westfälischen Friedenskongreß (1643-8)* (Münster, 1979), pp. 135, 174-7, 182-3.

3 D'Avaux to Mazarin, 23 Oct. 1646, *APW*, II B, iv, no. 217.

4 W. H. Stein, 'Das französische Elsaßbild im Dreißigjährigen Krieg', *Jahrbuch für westdeutsche Landeskunde*, v (1979), 131-53; K. Malettke, *Frankreich, Deutschland und Europa im 17. und 18. Jahrhundert* (Marburg, 1994), p. 384.

5 D'Avaux to Mazarin, 3 Sept. 1646, *APW*, II B, iv, no. 141.

acquire rights over the immediate estates; the issue would have to be resolved by negotiation.

Servien, on the other hand, stated that the immediate estates must be included in the rights transferred. Imperial officials had proposed that

> The immediate estates found in the Three Bishoprics which have hitherto belonged directly to the Empire will remain so in the future, which is a manifest contradiction, it not being possible that they cede to the King [Louis XIV] all the rights of the Emperor and the Empire over the Three Bishoprics on the one hand, and on the other that they retain those rights which belong to the Emperor and the Empire.[1]

As these letters were written at slightly different times, the differences might be attributable to the clauses under negotiation. In that case, the clauses transferring Alsace to France would have to exclude the immediate estates more clearly than those transferring the Three Bishoprics, which is not the case: the Alsatian clauses are more comprehensive. The Three Bishoprics are disposed of in a single paragraph which acknowledges France's 'supreme dominion, rights of superiority, and all other rights'. In Alsace, the Emperor not only cedes 'all rights, properties, domains, possessions, and jurisdictions that have belonged to him, to the Empire, or to the family of Austria', but is also enjoined, 'for the greater validity of the said cessions and alienations', specifically to abolish all previous laws to the contrary, 'and in the same way to exclude in perpetuity all means of restitution whatever, whatever right or title they might be founded on [simulque in perpetuum excludunt omnes et restitutionis vias quocunque tamdem jure titulove fundari possent]'.[2] Although a later clause does make an exception of the immediate estates, what sense, as Servien asks, does it make to transfer all rights and yet not transfer them at the same time?

The complexity of the negotiations over Alsace obscures the consensus among French policy-makers about sovereignty. They agreed that France was an absolute monarchy with sovereignty concentrated in the hands of the king, whose power was theoretically unlimited except by obedience to God and natural law. Whereas other states were 'sovereign', in none of them was sovereignty located, as in France, in a single person. Whether they were limited monarchies, oligarchies, or republics, their subjects shared in the exercise of sovereignty and hence had a status in international law. Thus, France might legitimately intervene in the Empire's internal affairs to protect the princes' rights against the Emperor's illegal actions, and might also insist that the Imperial Diet ratify the peace of Westphalia, because the Imperial estates enjoyed the right of deciding for war and

1 Servien to Lionne, 11 Sept. 1646, *APW*, II B, iv, no. 152.
2 Treaty of Münster, *CTS, 1648-9*, pp. 295, 297, 340-2.

peace ('ius belli et pacis'). On the other hand, the French resisted the Emperor's attempts to require the parlement of Paris or the Estates-General of France to ratify the treaty. Although similar claims had been enforced on France previously, by the 1640s the royal government had succeeded in depriving all other institutions, especially representative ones, of responsibility for foreign policy and war.[1] Thus, French officials clearly *had* defined the principle of sovereignty as the independence of the government from foreign interference, but they applied the principle to France alone.

Not only did French officials assume that the royal government was sovereign and possessed a right of intervention in other states, but they also assumed that France had a legitimate claim to most of Europe. In the fourteenth century, French jurists discovered the 'Salic Law', which declared that since the foundation of the monarchy women might not inherit the throne. Gradually, a second 'fundamental law' of the kingdom was developed: that the royal demesne was inalienable. At first, the restriction applied only to the king's personal lands, and was intended to prevent the monarchy from weakening itself. In Richelieu's day, however, it was extended to all of France. In essence, the law stated that France might not cede territory; a treaty that did so was invalid.

By this ingenious means, France extended its rights over most of Europe by redefining the inalienable kingdom to include everything that the ancient Gauls had ever occupied. The claim was the last and most ambitious in a series of self-serving interpretations by French jurists in Richelieu's service.[2] As a consequence, Richelieu – who seems to have believed what he was told – acted as if France had a right not only to border territories such as Alsace, but also to Portugal, Castile, Catalonia, Aragon, Roussillon, Sicily, Naples, Milan, and Lorraine.

The French showed how seriously they took the claims by giving new subjects, acquired by conquest, not a 'lettre de naturalité', or naturalization paper, as were foreigners, but a 'lettre de déclaration de naturalité' which in effect *re*-incorporated them into the French state.[3] Richelieu claimed that he refrained from enforcing France's rights only out of a 'juste modération': Europe was prevented from becoming French by the grace of the king of France.[4]

Hermann Weber convincingly argues that Richelieu strove for a

1 At the treaty of Arras in 1435, Burgundy had required that France obtain ratifications from the leading towns and nobles of the realm: J. G. Dickinson, *The Congress of Arras, 1435: A Study in Medieval Diplomacy* (Oxford, 1955), pp. 193-6. The parlement also ratified almost every other seventeenth-century treaty, including the treaties of the Pyrenees, Aix-la-Chapelle, Nijmegen, Ryswick, and Utrecht.

2 Carmack, 'Law in French Diplomacy', pp. 297-8.

3 Dickmann, 'Rechtsgedanke und Machtpolitik', pp. 54-65.

4 Ibid., pp. 65-70.

permanent peace in Christendom.[1] This point is worth making, because one can imagine someone else – for example, a *noble d'épée* who saw the army as his profession, the kind of adventurer who followed Francis I into Italy – who valued glory over peace, acting as what Randall Schweller calls a wolf: a predatory state with unlimited aims which values what it covets more than what it possesses.[2] Richelieu, nonetheless, was not a moderate statesman who worked to create a society of free and independent states. His foreign policy followed from the premise that Spain was the most dangerous power in Europe; accordingly, France must make a series of alliances to block Spanish aggression. Once Spain had been overpowered, Richelieu hoped to put France in Spain's place as Europe's hegemon.

Richelieu was a realist insofar as he assumed that international agreements by themselves would not ensure peace. 'Experience teaches us', he wrote in the preface to the instructions to the French plenipotentiaries at Westphalia, 'that the Spaniards only keep their treaties as long as it is useful to them and they do not have any occasion to break them advantageously.'[3] He had three means in mind to break the Spaniards of the habit. First, on the most idealist level, France would guarantee the peace of Europe against Spanish aggression by international law – that is, by means of a peace treaty similar to the one signed at Westphalia. Second, France would ally with every European state willing to oppose Spain and give the alliances a basis in international law by organizing a league similar to the one created by the peace of Westphalia. Third, France would obtain the right to intervene militarily throughout Europe for the purpose of obstructing Spanish violations. Although the right would be confirmed by treaty, to give effect to it France would occupy fortresses east of the Rhine and south of the Alps (they turned out to be Breisach and Pinerolo) that would enable it to project its troops into areas Spain was likely to invade. Christendom would be united and live in peace: France, by virtue of its power and historical role, would provide protection. The French conception of sovereignty was traditional in that it privileged France over all other states.

* * *

A great deal of creativity is required to attribute sovereignty to the peace of Westphalia in the way scholars have traditionally done. It is more reason-

1 H. Weber, '"Une Bonne Paix": Richelieu's Foreign Policy and the Peace of Christendom', in *Richelieu and His Age*, ed. J. Bergin and L. Brockliss (Oxford, 1992), pp. 45-69; 'Chrétienté et équilibre européen dans la politique du Cardinal de Richelieu', *XVIIe Siècle*, xlii (1990): 7-16; 'Une paix sûre et prompte: Die Friedenspolitik Richelieus', in *Zwischenstaatliche Friedenswahrung in Mittelalter und Früher Neuzeit*, ed. H. Duchhardt (Cologne, 1991), pp. 111-29.

2 R. L. Schweller, *Deadly Imbalances: Tripolarity and Hitler's Strategy of World Conquest* (New York, 1998), p. 89.

3 *APW*, i. pt. 1, 71.

able to treat the negotiations at the congress (as opposed to the treaties that followed) as an important and identifiable stage in the evolution of the states system towards sovereignty. Nobody began or even ended the negotiations at Westphalia with the idea of creating an international system of sovereign, independent states. Many, however, wished to protect their own sovereignty. France not only wished to exclude the parlement from the ratification, but also to extend French authority into other territories. For Sweden, however, securing its own sovereignty was work enough.

Although Gustavus Adolphus no doubt wished to be elected Emperor after his great victories in the early 1630s, his chancellor, Axel Oxenstierna, had no illusions ten years later about the likelihood of Sweden's pre-eminence. He wrote to his son Johann, who led the Swedish delegation to the peace conference: 'As far as the peace talks are concerned, do not let yourself be disturbed that they go so slowly ... Powerful and cunning enemies, ill-willed allies, the interests of all the powers and republics of Europe struggling with each other can make a confusing negotiation and disguise the outcome ... but ... great negotiations require a long time and great men.'[1] Oxenstierna's goal was not international harmony, but to secure adequate power to preserve Sweden's independence. 'We must get our security from God, and, next to him, ourselves,' he explained. 'All other promises are nothing other than winning time and circumstances to form other plans contrary to our interests.'[2] Rather than meet dishonesty with dishonesty, he planned to be well prepared. He told his son to 'avoid as far as possible malicious activities. But remain none the less realistic in all your actions.'[3]

Sweden, with around two-and-a-half million people and not wealthy, was preoccupied with protecting itself. Owing to Oxenstierna's realist conception of international politics, Sweden was more determined than France to obtain material security (in the form of provinces and fortresses) to institutionalize its status as an independent state. Whereas French officials spoke of controlling the gateways into Germany and Italy,[4] Sweden's second plenipotentiary, Johan Adler Salvius, compared its territorial and institutional ambitions at the congress to a fortress: for Sweden, 'the Baltic Sea will be the ditch, Pomerania and Mecklenburg will serve as counterscarp, and the other Imperial estates will be, so to speak, the outer works.'[5]

1 A. Oxenstierna to J. Oxenstierna, 27 April 1647, *Die Schwedischen Korrespondenzen: 1646-7*, II C, *APW*, iii. 396, same to same, 4 May 1647, *APW*, II C, iii. 402.

2 A. Oxenstierna to J. Oxenstierna, 11 July 1646, *Die Schwedischen Korrespondenzen: 1645-6*, *APW*, II C, ii. 370.

3 A. Oxenstierna to J. Oxenstierna, 10 March 1646, *APW*, II C, ii. 189.

4 G. Zeller, 'Saluces, Pignerol et Strasbourg: La politique des frontières au temps de la prépondérance espagnole', in *Aspects de la politique française sous l'ancien régime* (Paris, 1964), pp. 114-27.

5 S. Goetze, *Die Politik des schwedischen Reichskanzlers Axel Oxenstierna gegenüber Kaiser und Reich*

In pursuit of this goal, Sweden opposed the league France proposed, and worked to have it left out of the treaty because it feared a league dominated by France. It sought to make territorial gains in Pomerania, Bremen, and Verden despite strong opposition from Brandenburg; and, unlike France, did not offer to indemnify states from which it acquired territory.[1]

Finally, Sweden pursued a policy of balance of power, both within the Empire and without, by helping to organize confessional blocks that paralysed the Imperial constitution, and by refusing to join France in fighting against Spain. For Oxenstierna, Sweden's goal was 'to restore German liberty, to re-establish [good relations] with neighbouring rulers and republics, and in this manner to conserve the equilibrium in all of Europe'.[2] Salvius expressed Sweden's interest in a balance of power even more plainly: 'The first rule of politics is that the security of all depends on the equilibrium of the individuals. When one begins to become powerful ... the others place themselves, through unions or alliances, into the opposite balance in order to maintain the equipoise.'[3] Swedish rhetoric emphasized defence and independence, by contrast with France's description of itself as the international mediator and guarantor of justice.[4]

The idea of sovereignty was not new in the 1640s; the question was whether sovereignty should be multipolar. The threat to multiple sovereignty no longer came from the Emperor and the pope, but from Spain and, increasingly, France; not because they had the most developed theories of hegemony, but because they had the power to aspire to it. Richelieu's hopes of making France the arbiter of Christendom ultimately failed owing to the resistance of the numerous other states that preferred independence. States able to limit France's power – above all its allies, the United Provinces and Sweden – were aware of the threat and took steps to anticipate it.

Although many statesmen had to co-operate to restrain France, they were helped by the increasing number of diplomatic ties during the sixteenth century, following from the introduction of resident ambassadors in Italy in the fifteenth, and by the insecurity of governments during the wars of religion.[5] As more states were kept abreast of diplomatic events far from home, they could more easily find allies against a potential hegemon, consciously adopt the balancing policies evident in the thinking of almost

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(Kiel, 1971), pp. 244-6.

1 See, e.g., the French admonition in Oxenstierna to Christina, 23 July 1646, *APW*, II C, ii. 370.

2 Ibid.

3 G. Parker, *Thirty Years' War* (2nd ed., New York, 1997), p. 164; B. Fahlborg, 'Westfaliska Folkrättsprinciper och Svensk Jämviktspolitik', in *Historiska Studier tillägnade Sven Tunberg*, ed. A. Schück and Å. Stille (n.p., 1942), pp. 337-56, which concentrates on Swedish balancing policies after 1648.

4 On France's self-description, see Dickmann, *Der Westfälische Frieden*, p. 82.

5 On the role of the intensification of diplomatic relations, see Onuf, 'Sovereignty', pp. 434-5.

all mid-seventeenth-century states.[1] Although no one yet conceived of sovereignty as the recognition of the right of other states to rule their own territory, the increasingly complex diplomatic milieu shows how a multipolar system was able to develop. In this sense, one may locate the origins of sovereignty around the peace of Westphalia, but only as a consequence of the negotiations, not of an explicit or implicit endorsement of the idea of sovereignty in the terms of the treaties.

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1 Cf. K. Repgen, 'Der Westfälische Friede und die Ursprünge des europäischen Gleichgewichts', in *Von der Reformation zur Gegenwart: Beiträge zu Grundfragen der neuzeitlichen Geschichte*, ed. K. Gotto and H. G. Hockerts (Paderborn, 1988), pp. 53-66.